

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MURs 7199, 7219 and 7242

DATE COMPLAINTS FILED: November 14, 2016
February 28, 2017
April 26, 2017

DATE OF NOTIFICATIONS: November 18, 2016
February 13, 2017
May 1, 2017

DATE OF LAST RESPONSE: June 19, 2017

DATE ACTIVATED: June 20, 2017

EPS:

ELECTION CYCLE: 2016

EXPIRATION OF SOL: Earliest: October 26, 2021
Latest: December 1, 2021

COMPLAINANTS:

MUR 7199:
Foundation for Accountability and Civic Trust

MURs 7219 and 7242:
Douglas Guetzloe

RESPONDENTS:

Patrick Murphy
Friends of Patrick Murphy and Brian Foucart
in his official capacity as treasurer
Thomas Murphy, Jr.
Coastal Construction Group of South Florida, Inc.
Floridians for a Strong Middle Class and
Jennifer May in her official capacity as treasurer
Senate Majority PAC and Rebecca Lambe
in her official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30109
52 U.S.C. § 30103(a), (b)
52 U.S.C. § 30104(b)
52 U.S.C. § 30116(a), (f)
52 U.S.C. § 30118
11 C.F.R. § 100.33
11 C.F.R. § 100.52
11 C.F.R. § 100.82
11 C.F.R. § 104.3
11 C.F.R. § 104.5
11 C.F.R. § 109.21

11 C.F.R. § 110.10
11 C.F.R. § 111.4(a)
11 C.F.R. § 114.2(b)
11 C.F.R. § 116.11

INTERNAL REPORTS CHECKED: Disclosure Reports
FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complaints in these matters allege that 2016 Senate candidate Patrick Murphy ("the Candidate") and his campaign committee, Friends of Patrick Murphy and Brian Foucart in his official capacity as treasurer (the "Committee"), accepted excessive and prohibited contributions, in violation of 52 U.S.C. §§ 30116(f) and 30118.

Specifically, Complainants allege that Coastal Construction Group of South Florida, Inc. ("Coastal Construction") and Thomas Murphy, Jr., who is the Candidate's father and Coastal Construction's Board Chairman and Chief Executive Officer, made an illegal contribution when they bought back \$1 million in Coastal Construction stock from the Candidate, who then used the proceeds both to secure a bank loan to the Committee, and to repay the Committee's loan. The Complainant in MUR 7219 also alleges that Respondents violated the regulation limiting post-election committee repayments of personal loans from a candidate, and that the Committee misreported the loan. The Complainant in MUR 7199 alleges that two independent-expenditure-only committees, Floridians for a Strong Middle Class and Jennifer May in her official capacity as treasurer ("Floridians") and Senate Majority PAC and Rebecca Lambe in her official capacity as treasurer ("SMP"), both of which received contributions from Thomas Murphy, Jr., and

1 Coastal Construction, made coordinated expenditures that resulted in contributions to the
2 Candidate.¹

3 Respondents assert that the Candidate obtained the \$1 million in Coastal Construction
4 stock prior to and independent of his Senate candidacy, and he properly reported it as a personal
5 asset. Respondents state that the Candidate sold his stock for fair market value, and he properly
6 used the proceeds, which were his personal funds, as collateral for the Committee's bank loan
7 and to repay the loan, and the Committee properly reported both transactions.² Respondents also
8 maintain that the regulation regarding repayment of candidate loans is inapplicable because the
9 Candidate repaid the Committee's loan, not the reverse. Finally, Respondents contend that there
10 is no evidence that any expenditures by Floridians or SMP were coordinated with the Candidate
11 or the Committee.³

12 The available information indicates that the proceeds from the sale of the Coastal
13 Construction stock were the Candidate's personal funds, and could be used to secure or repay a
14 loan on behalf of the Committee. Further, the repayment did not violate Commission
15 regulations, and it appears to have been properly reported. Finally, the available information
16 does not suggest that Floridians or SMP coordinated their communications or expenditures with
17 the Candidate or the Committee. Accordingly, we recommend that the Commission find no
18 reason to believe that Patrick Murphy, Friends of Patrick Murphy and Brian Foucart in his

¹ In MUR 7067 (Friends of Patrick Murphy), the Commission found no reason to believe that the contributions by Thomas Murphy, Jr. and Coastal Construction to Floridians, alone, resulted in coordination. See Commission Factual and Legal Analyses approved on March 6, 2017.

² MUR 7199 Resp. at 3-5; MUR 7219 Resp. at 1-3; 7242 Resp. at 1, 5.

³ MUR 7199 Resp. at 5-7.

official capacity as treasurer, Coastal Construction Group of South Florida, Inc., Thomas Murphy, Jr., and Senate Majority PAC and Rebecca Lambe in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116 or 30118.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

Patrick Murphy was a candidate for the U.S. Senate in the 2016 election cycle. The Committee was his 2016 principal campaign committee.

1. Candidate's Sale of Coastal Construction Stock

Before his election to the House of Representatives in 2012, the Candidate was Vice President and owned shares in Coastal Construction, a closely held corporation owned by the Murphy family.⁴ On December 28, 2012, before he entered Congress, the Candidate received additional shares in Coastal Construction from his parents, Leslie and Thomas Murphy, Jr.⁵ The Candidate disclosed his ownership of the Coastal Construction shares as personal assets in his Personal Financial Disclosure Reports filed with the Clerk of the House of Representatives "House disclosure reports."⁶ On the 2015 and 2016 House disclosure reports attached to the Response, the Candidate valued the shares as being worth \$1-5 million.⁷

On October 25, 2016, Murphy sold a portion of his shares in Coastal Construction back to the company for \$1,000,120.⁸ Respondents maintain that the sale was conducted in

⁴ MUR 7199 Compl. at 1; MUR 7199 Resp. at 1-2.

⁵ MUR 7199 Resp. at 2. *See also* Thomas Murphy, Jr. Decl. at ¶ 4 (Jan. 17, 2017).

⁶ MUR 7199 Resp. at 2, Ex. B; MUR 7242 Resp. at 1, Ex. B.

⁷ *Id.* The disclosure reports attached to the Response only cover 2015 and 2016, but his House disclosure reports for 2012 through 2014 also show the shares and the same value range.

⁸ MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5; *see also* Thomas Murphy, Jr. Decl. at ¶¶ 5-6.

1 accordance with, and under the valuation method established by, a shareholders' agreement.⁹
2 The Candidate then pledged the proceeds as collateral for a \$1 million bank loan the Committee
3 obtained at an interest rate of 3.5% and which matured on April 25, 2017.¹⁰ The Committee
4 disclosed the loan before the election on a 48-hour Notice of Contributions and also on its 2016
5 Post-General Election Report.¹¹

6 On December 1, 2016, Murphy repaid the loan using the same \$1 million that he pledged
7 as collateral.¹² The Committee reported the loan repayment on its 2016 Year-End Report as an
8 in-kind contribution from Murphy to the Committee.¹³

9 2. Coastal Construction and Thomas Murphy, Jr. Contributions to Floridians and
10 SMP

11 Floridians and SMP are independent-expenditure-only committees that each sponsored
12 more than a million dollars in independent expenditures supporting the Candidate during the
13 2016 election cycle.¹⁴ Coastal Construction and Thomas Murphy, Jr. contributed a total of
14 \$750,000 to Floridians¹⁵ and \$2 million to SMP¹⁶ during 2016. In October 2016, SMP made two
15 contributions of \$500,000 each to Floridians.¹⁷

⁹ The terms of the sale were formally approved by a written consent of the Board of Directors and Shareholders of Coastal Construction, which found that the sale was in the best interest of the company. MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5; *see also* Thomas Murphy, Jr. Decl. at ¶ 7.

¹⁰ MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5.

¹¹ MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5. *See* Committee 2016 Post-General Election Report, <http://docquery.fec.gov/pdf/587/201612130200766587/201612130200766587.pdf>; Committee 48 Hour Notice of Contributions/Loans Received, <http://docquery.fec.gov/pdf/650/201610310200642650/201610310200642650.pdf>.

¹² MUR 7214 Resp. at 2; MUR 7242 Resp. at 2.

¹³ MUR 7214 Resp. at 2; MUR 7242 Resp. at 2; Committee 2016 Year-End Report, <http://docquery.fec.gov/pdf/890/201701310200021890/201701310200021890.pdf>.

¹⁴ *See* notes 15, 17.

¹⁵ *See* Floridians 2016 October Quarterly and Year-End Reports, <http://docquery.fec.gov/pdf/036/201704259053477036/201704259053477036.pdf>,

Complainant argues that the contributions from Thomas Murphy, Jr. and Coastal to Floridians and SMP show that subsequent expenditures were coordinated with the Candidate and the Committee. Respondents contend that the contributions by Thomas Murphy, Jr. and Coastal Construction to Floridians and SMP do not satisfy the conduct prong of the Commission's coordinated communication regulations.

B. Analysis

1. The Committee's Loan did not Violate the Act

A contribution is any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.¹⁸ The Act provides that no person may make, and no candidate, officer, or employee of a political committee (other than an independent-expenditure-only committee or a hybrid account) shall knowingly accept any contribution that violates the contribution limits¹⁹ set forth in 52 U.S.C. § 30116, or the prohibitions on contributions by national banks, corporations or labor organizations set forth in 52 U.S.C. § 30118.

As a general exception to this rule, Commission regulations provide, "candidates for federal office may make unlimited expenditures from personal funds," which include

<http://docquery.fec.gov/pdf/611/201701319041583611/201701319041583611.pdf>.

¹⁶ See SMP 2016 October Quarterly Report,
<http://docquery.fec.gov/pdf/451/201706229065072451/201706229065072451.pdf>.

¹⁷ See SMP 2016 Post-General Election Report,
<http://docquery.fec.gov/pdf/026/201706229065076026/201706229065076026.pdf#navpanes=0>;
Floridians 2016 Post-General Election Report,
<http://docquery.fec.gov/pdf/482/201612089039971482/201612089039971482.pdf>.

¹⁸ 52 U.S.C. § 30101(8)(A)(i) (emphasis added).

¹⁹ During the 2016 election cycle, the contribution limit per election was \$2,700.

1 contributions to their principal campaign committees.²⁰ Personal funds include "personal
2 assets," which are "[a]mounts derived from any asset that, under applicable State law, at the time
3 the individual became a candidate, the candidate had legal right of access to or control over, and
4 with respect to which the candidate had legal and rightful title or an equitable interest," as well as
5 "income," which includes "[i]ncome from the candidate's stock or other investments
6 including...proceeds from the sale or liquidation of such stocks or investments."²¹ A candidate
7 may sell a personal asset for fair market value and then use the income derived from the sale to
8 benefit his authorized campaign committee without violating the Act, so long as the asset is sold
9 at the "normal and usual market price."²²

10 Under the Act, a "loan" includes a guarantee, endorsement, and any other form of
11 security.²³ Each endorser or guarantor shall be deemed to have contributed that portion of the
12 total amount of the loan for which he or she agreed to be liable in a written agreement.²⁴ A loan
13 that exceeds the contribution limits, or otherwise violates 52 U.S.C. §§ 30116 or 30118, is
14 unlawful, whether or not it is repaid.

15 A loan to a political committee or a candidate by a commercial bank is exempt from the
16 definition of contribution, if such loan is made in accordance with applicable law and in the

²⁰ 11 C.F.R. §§ 110.10, 100.33. *See also* Advisory Op. 1991-90 (Hoagland) (Jan. 15, 1991) (Affirming that Commission regulations permit a candidate to make unlimited expenditures, including personal loans, from his personal funds); Advisory Op. 1985-33 (Collins) (Nov. 22, 1985) (same).

²¹ 11 C.F.R. §§ 110.10, 100.33(a), (b).

²² *See* Factual and Legal Analysis at 6 MUR 6412 (Blumenthal) (Commission found it permissible for a candidate to sell his interest in a residence they owned jointly to his wife and then loan the proceeds of the sale to his principal campaign committee); Advisory Op 1984-60 (Mulloy) (Jan. 11, 1986) (Commission found it permissible for a candidate to sell his interest in a partnership to a family member and use the proceeds to retire campaign debt, so long as the sale was made at the "usual and normal" market price).

²³ 11 C.F.R. § 100.52(b).

²⁴ 11 C.F.R. §§ 100.52(b)(3), 100.82(c).

1 ordinary course of business.²⁵ A loan will be deemed to be made in the ordinary course of
2 business if it: “(1) [b]ears the usual and customary interest rate of the lending institution for the
3 category of loan involved; (2) [i]s made on a basis that assures repayment; (3) [i]s evidenced by
4 a written instrument; and (4) [i]s subject to a due date or amortization schedule.”²⁶ A loan is
5 considered “made on a basis that assures repayment” if it is obtained using a perfected security
6 interest in collateral owned by the candidate, the fair market value of the collateral is equal to or
7 greater than the loan amount, and the candidate provides documentation to show that the lending
8 institution has a perfected security interest in the collateral.²⁷ Sources of collateral include
9 goods, accounts receivable, and cash on deposit.²⁸

10 Here, the Committee’s loan from Amalgamated Bank was guaranteed by the Candidate’s
11 personal funds. The stock in Coastal Construction, which Murphy sold to get the \$1 million to
12 guarantee the Committee’s loan, had been Murphy’s personal property since December 2012 and
13 had been declared as a personal asset on his House disclosure reports for 2012 through 2016.²⁹
14 The Candidate sold the stock back to Coastal Construction for the “Book Value” as defined in
15 Coastal Construction’s shareholders’ agreement.³⁰ The Complaints provide no facts to support
16 the allegations that the shares of the closely held company had “no real market value” or that the
17 value of the shares was “contrived.”³¹ The Candidate’s father provided a sworn statement that

²⁵ 11 C.F.R. § 100.82(a).

²⁶ *Id.*

²⁷ 11 C.F.R. § 100.82(e)(1)(i).

²⁸ *Id.*

²⁹ MUR 7199 Resp. at 3-4, Ex. B.

³⁰ MUR 7199 Resp. at Ex. B.

³¹ MUR 7242 Compl. at 2.

1 the issuance and sale of the stock was governed by a shareholders' agreement, executed on
2 December 9, 1998, which establishes that the "Book Value" of its stock would be determined by
3 the fair market value, as calculated by a certified public accountant using generally accepted
4 accounting principles.³² Without information to refute the assertions in this declaration, there is
5 no basis to suggest that the Candidate did not receive fair market value for the sale of his
6 shares.³³

7 Further, the terms of the \$1 million loan the Candidate guaranteed for the Committee
8 seem to satisfy the requirements of 11 C.F.R. § 100.82. The loan to the Committee by
9 Amalgamated Bank, a national commercial bank, bears a 3.5% interest rate, which, according to
10 the terms of the Credit Agreement, was equal to "the interest rate per annum equal to the Base
11 Rate in effect on such day, plus the Applicable Margin" and was not less than 3.25%.³⁴
12 Additionally, the loan was made on a basis that assured repayment since it was guaranteed by
13 \$1 million cash collateral. Finally, the terms of the loan are reflected in the written Credit
14 Agreement Murphy executed on October 25, 2016, and the loan had a maturity date of
15 April 25, 2017.³⁵ Respondents assert that the loan was at the usual and customary interest rate of
16 the lending institution for this type of secured loan. Complainants offer no information which
17 refutes this claim, and we are not aware of any contrary information.

³² Thomas Murphy, Jr. Decl. at ¶ 5.

³³ See AO 1984-60 (Mulloy) (Stating that an appraisal by an expert using generally acceptable appraisal methods is acceptable as prima facie evidence of a property's usual market price, although it does not rule out other valuation methods that would "reliably establish such price or value"); see also Factual and Legal Analysis at 6 MUR 5421 (Kerry for President) (Commission accepted appraisal by a state-certified appraiser as "prima facie evidence of the fair market value" of the property).

³⁴ MUR 7199 Resp. at Ex. B.

³⁵ *Id.*

1 In addition, the allegation that Murphy's repayment was improper is based on a
2 misapplication of 11 C.F.R. § 116.11. Commission regulations restrict how an authorized
3 committee may repay personal loans by a candidate that exceed \$250,000.³⁶ "Personal loans,"
4 for the purposes of 11 C.F.R. § 116.11, include "loans made to a candidate's authorized
5 committee that are endorsed or guaranteed by the candidate or that are secured by the candidate's
6 personal funds."³⁷ An authorized committee "[m]ay repay the entire amount of the personal
7 loans using contributions to the candidate or the candidate's authorized committee provided that
8 those contributions were made on the day of the election or before" and "[m]ay repay up to
9 \$250,000 of the personal loans from contributions made to the candidate or the candidate's
10 authorized committee after the date of the election," if it does so within 20 days of the election.³⁸
11 If the aggregate outstanding balance of the personal loans exceeds \$250,000 after the election,
12 the committee may only use the amount of cash on hand as of the day after the election to repay
13 all or part of the personal loans, and must treat the portion of any outstanding balance as a
14 contribution by the candidate, which should be reported in the first disclosure report filed after
15 the election.³⁹

16 Complainant misapplies the regulation, which restricts loan repayments *by committees*.
17 The Committee did not repay a personal loan from the Candidate. Rather, the Candidate repaid
18 the Committee's bank loan, and the Committee properly reported the loan repayment as an in-

³⁶ 11 C.F.R. § 116.11(b), (c).

³⁷ 11 C.F.R. § 116.11(a).

³⁸ 11 C.F.R. § 116.11(b)(1).

³⁹ *Id.*

1 kind contribution. Further, there is no information to suggest the repayment of the loan violated
2 the Act or any other Commission regulation.

3 Further, the Complaint's contention that the Committee improperly reported the single
4 loan as two \$1 million loans in its 2016 Post-General Election Report is incorrect.⁴⁰ The
5 Committee properly reported both the loan and Murphy's guaranty in accordance with 11 C.F.R.
6 §§ 100.82(b) and 104.3 on the Committee's 2016 Post-General Election Report.⁴¹ The loan
7 guaranty was also reported in a 48-hour notice filed with the Commission, in compliance with
8 Section 104.5(f). Similarly, the Committee reported the loan repayment as an in-kind
9 contribution from Murphy and as an itemized disbursement to the lender on its 2016 Year-End
10 Report.⁴²

11 In summary, we recommend that the Commission find no reason to believe that Patrick
12 Murphy, Friends of Patrick Murphy and Brian Foucart in his official capacity as treasurer,
13 Thomas Murphy, Jr., and Coastal Construction violated 52 U.S.C. §§ 30116 or 30118 by
14 accepting or making excessive or prohibited contributions to the Murphy campaign. Further, we
15 recommend that the Commission find no reason to believe the Committee violated 52 U.S.C.
16 § 30104(b) or 11 C.F.R. § 116.11.

17 2. The Coordination Allegations are Unsupported

18 The Act provides that an expenditure made by any person "in cooperation, consultation,
19 or concert, with, or at the request or suggestion of, a candidate, his authorized political

⁴⁰ MUR 7219 Compl. at 2-3.

⁴¹ See also AO 1985-33 (Collins).

⁴² *Id.*

committees or their agents” constitutes an in-kind contribution.⁴³ IEOPCs are prohibited from making contributions to candidates and their authorized committees.⁴⁴

The Commission’s regulations provide a three-part test for determining when a communication is a coordinated expenditure, which is treated as an in-kind contribution.⁴⁵ The communication must: (1) be paid for by a third party; (2) satisfy one of five “content” standards listed in 11 C.F.R. § 109.21(c); and (3) satisfy one of six “conduct” standards listed in 11 C.F.R. § 109.21(d).⁴⁶ All three prongs must be satisfied for a communication to be considered coordinated.⁴⁷ Respondents do not dispute that the independent expenditures sponsored by Floridians and SMP satisfy the “payment” and “content” requirements.⁴⁸ We therefore focus our analysis on the “conduct” standards.

The Commission’s regulations at 11 C.F.R. § 109.21(d) set forth six types of conduct between the payor and the candidate’s committee, whether or not there is formal agreement or collaboration, which can satisfy the conduct prong. Such conduct includes: (1) a request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee or independent contractor; and (6) dissemination, distribution, or republication of

⁴³ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20; *see also* 52 U.S.C. § 30104(b) (requiring political committees to disclose to the Commission contributions received from other political committees and persons).

⁴⁴ *See* 52 U.S.C. §§ 30116(f), 30118(a); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

⁴⁵ 11 C.F.R. § 109.21(a)-(b).

⁴⁶ *Id.*

⁴⁷ *Id.* *See also* Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

⁴⁸ It is clear that third parties—SMP and Floridians—paid for the reported independent expenditures satisfying the first prong of the coordination regulations. *See id.* § 109.21(a)(1). These advertisements also satisfy the content standard because they qualify as a public communication that expressly advocated the election of a candidate. *See id.* § 109.21(a)(1).

1 campaign material.⁴⁹

2 Here, the Complaint does not provide specific examples of the communications that are
3 alleged to have been paid for by Floridians, nor does it include any other facts that would satisfy
4 the conduct prong of the coordinated communications test. The Complaint alleges, "[N]umerous
5 financial transfers between Murphy, his father, their family company and [Floridians]...indicate
6 coordination between Murphy and [Floridians]."⁵⁰ The Commission has already determined, in
7 another matter involving the Candidate's 2016 campaign and Floridians, that "[t]he fact that
8 Thomas Murphy and Coastal Construction contributed to [Floridians], and that Rep. Murphy has
9 an ownership interest in Coastal Construction, without more, does not appear to satisfy any of
10 the conduct standards."⁵¹

11 The available information does not indicate that contributions by Thomas Murphy, Jr.
12 and Coastal Construction or expenditures by Floridians and SMP would otherwise meet the
13 conduct prong, because they were not made at the request or suggestion of the Committee, with
14 its material involvement, or after substantial discussion with the Committee.⁵² There is also no
15 information that Floridians, SMP, Thomas Murphy, Jr., or Coastal Construction shared common
16 vendors, former employees, or independent contractors with the Committee,⁵³ or disseminated,

⁴⁹ 11 C.F.R. § 109.21(d).

⁵⁰ MUR 7199 Compl. at 1.

⁵¹ MUR 7067 (Friends of Patrick Murphy), FLA at 5 (finding no reason to believe that Floridians coordinated their communications with the Candidate or the Committee).

⁵² 11 C.F.R. § 109.21(d).

⁵³ *Id.* Disclosures to the Commission indicate that Floridians and SMP used two of the same vendors, Waterfront Strategies and AKPD Message and Media for their media advertising buys at different times during the election cycle; however, reports also indicate that the Committee did not make disbursements to either of these vendors. Disclosures from Floridians and SMP also indicate that they used the same vendors to make independent expenditures for media buys to support other federal candidates during the 2016 election cycle.

distributed, or republished the Candidate's campaign material.⁵⁴

Because the available information fails to satisfy the coordinated communications test, we recommend that the Commission find no reason to believe that Patrick Murphy, Friends of Patrick Murphy and Brian Foucart in his official capacity as treasurer, Thomas Murphy, Jr., Coastal Construction Group of South Florida, Inc., Floridians for a Strong Middle Class and Jennifer May in her official capacity as treasurer, and Senate Majority PAC and Rebecca Lambe in her official capacity as treasurer, violated 52 U.S.C. §§ 30116 or 30118 by making or accepting excessive or prohibited contributions.

IV. RECOMMENDATIONS


1. Find no reason to believe that Patrick Murphy and Friends of Patrick Murphy and Brian Foucart in his official capacity as treasurer, violated 52 U.S.C. §§ 30116(f) and 30104(b) by accepting an excessive or prohibited contribution and failing to properly report a loan to the Murphy campaign.
2. Find no reason to believe that Thomas Murphy, Jr. violated 52 U.S.C. § 30116(a) by making an excessive contribution to the Murphy campaign.
3. Find no reason to believe that Coastal Construction Group of South Florida, Inc. violated 52 U.S.C. § 30118 by making a prohibited contribution to the Murphy campaign.

⁵⁴ *Id.* The fact that Thomas Murphy, Jr., Coastal Construction, made contributions to Floridians or that Floridians paid for independent expenditures to support Patrick Murphy's candidacy is not itself evidence of coordination, where the specific elements of the conduct prong have not been satisfied. See e.g., MUR 7067 (Friends of Patrick Murphy), FLA at 5 (finding no reason to believe that Floridians coordinated their communications with the Candidate or the Committee); MUR 6679 (Renacci) (finding that the timing and dollar amount spent for television and media buys by IEOPC to support the federal candidate are insufficient to establish coordination, where elements of the conduct prong are not met); MUR 6477 (Turn Right USA) (finding no coordination by IEPOC that made independent expenditures to support federal candidate where elements of conduct prong are not met); MUR 6821 (Shaheen) (same).

4. Find no reason to believe that Floridians for a Strong Middle Class and Jennifer May in her official capacity as treasurer violated 52 U.S.C. § 30116(a) by making an excessive contribution to the Murphy campaign.
5. Find no reason to believe that Senate Majority PAC and Rebecca Lambe in her official capacity as treasurer violated 52 U.S.C. § 30116(a) by making an excessive contribution to the Murphy campaign.
6. Approve the attached Factual and Legal Analysis.
7. Approve the appropriate letters; and
8. Close the file.

11.2.17

Date



Stephen A. Gura
Deputy Associate General Counsel
for Enforcement



Mark D. Shonkwiler
Assistant General Counsel



Camilla Jackson Jones
Attorney

Attachment:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Patrick Murphy

MURs: 7119, 7219 and 7242

Friends of Patrick Murphy and Brian Foucart
in his official capacity as treasurer

Thomas Murphy, Jr.

Coastal Construction Group of South Florida, Inc.

Floridians for a Strong Middle Class and
Jennifer May in her official capacity as treasurer

Senate Majority PAC and Rebecca Lambe
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I. INTRODUCTION

The complaints in these matters allege that 2016 Senate candidate Patrick Murphy ("the Candidate") and his campaign committee, Friends of Patrick Murphy and Brian Foucart in his official capacity as treasurer (the "Committee"), accepted excessive and prohibited contributions, in violation of 52 U.S.C. §§ 30116(f) and 30118.

Specifically, Complainants allege that Coastal Construction Group of South Florida, Inc. ("Coastal Construction") and Thomas Murphy, Jr., who is the Candidate's father and Coastal Construction's Board Chairman and Chief Executive Officer, made an illegal contribution when they bought back \$1 million in Coastal Construction stock from the Candidate, who then used the proceeds both to secure a bank loan to the Committee, and to repay the Committee's loan. The Complainant in MUR 7219 also alleges that Respondents violated the regulation limiting post-election committee repayments of personal loans from a candidate, and that the Committee misreported the loan. The Complainant in MUR 7199 alleges that two independent-expenditure-

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4 Coastal Construction, made coordinated expenditures that resulted in contributions to the
5 Candidate.¹

6 Respondents assert that the Candidate obtained the \$1 million in Coastal Construction
7 stock prior to and independent of his Senate candidacy, and he properly reported it as a personal
8 asset. Respondents state that the Candidate sold his stock for fair market value, and he properly
9 used the proceeds, which were his personal funds, as collateral for the Committee's bank loan
10 and to repay the loan, and the Committee properly reported both transactions.² Respondents also
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15 The available information indicates that the proceeds from the sale of the Coastal
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¹ In MUR 7067 (Friends of Patrick Murphy), the Commission found no reason to believe that the contributions by Thomas Murphy, Jr. and Coastal Construction to Floridians, alone, resulted in coordination. See Commission Factual and Legal Analyses approved on March 6, 2017.

² MUR 7199 Resp. at 3-5; MUR 7219 Resp. at 1-3; MUR 7242 Resp. at 1, 5.

³ MUR 7199 Resp. at 5-7.

the Candidate or the Committee. Accordingly, the Commission finds no reason to believe that Patrick Murphy, Friends of Patrick Murphy and Brian Foucart in his official capacity as treasurer, Coastal Construction Group of South Florida, Inc., Thomas Murphy, Jr., and Senate Majority PAC and Rebecca Lambe in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116 or 30118.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

Patrick Murphy was a candidate for the U.S. Senate in the 2016 election cycle. The Committee was his 2016 principal campaign committee.

1. Candidate's Sale of Coastal Construction Stock

Before his election to the House of Representatives in 2012, the Candidate was Vice President and owned shares in Coastal Construction, a closely held corporation owned by the Murphy family.⁴ On December 28, 2012, before he entered Congress, the Candidate received additional shares in Coastal Construction from his parents, Leslie and Thomas Murphy, Jr.⁵ The Candidate disclosed his ownership of the Coastal Construction shares as personal assets in his Personal Financial Disclosure Reports filed with the Clerk of the House of Representatives "House disclosure reports."⁶ On the 2015 and 2016 House disclosure reports attached to the Response, the Candidate valued the shares as being worth \$1-5 million.⁷

⁴ MUR 7199 Compl. at 1; MUR 7199 Resp. at 1-2.

⁵ MUR 7199 Resp. at 2. *See also* Thomas Murphy, Jr. Decl. at ¶ 4 (Jan. 17, 2017).

⁶ MUR 7199 Resp. at 2, Ex. B; MUR 7242 Resp. at 1, Ex. B.

⁷ *Id.* The disclosure reports attached to the Response only cover 2015 and 2016, but his House disclosure reports for 2012 through 2014 also show the shares and the same value range.

1 On October 25, 2016, Murphy sold a portion of his shares in Coastal Construction back
2 to the company for \$1,000,120.⁸ Respondents maintain that the sale was conducted in
3 accordance with, and under the valuation method established by, a shareholders' agreement.⁹
4 The Candidate then pledged the proceeds as collateral for a \$1 million bank loan the Committee
5 obtained at an interest rate of 3.5% and which matured on April 25, 2017.¹⁰ The Committee
6 disclosed the loan before the election on a 48-hour Notice of Contributions and also on its 2016
7 Post-General Election Report.¹¹

8 On December 1, 2016, Murphy repaid the loan using the same \$1 million that he pledged
9 as collateral.¹² The Committee reported the loan repayment on its 2016 Year-End Report as an
10 in-kind contribution from Murphy to the Committee.¹³

11 2. Coastal Construction and Thomas Murphy, Jr. Contributions to Floridians and
12 SMP

13 Floridians and SMP are independent-expenditure-only committees that each sponsored
14 more than a million dollars in independent expenditures supporting the Candidate during the
15 2016 election cycle.¹⁴ Coastal Construction and Thomas Murphy, Jr. contributed a total of

⁸ MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5; *see also* Thomas Murphy, Jr. Decl. at ¶¶ 5-6.

⁹ The terms of the sale were formally approved by a written consent of the Board of Directors and Shareholders of Coastal Construction, which found that the sale was in the best interest of the company. MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5; *see also* Thomas Murphy, Jr. Decl. at ¶ 7.

¹⁰ MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5.

¹¹ MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5. *See* Committee 2016 Post-General Election Report, <http://docquery.fec.gov/pdf/587/201612130200766587/201612130200766587.pdf>; Committee 48 Hour Notice of Contributions/Loans Received, <http://docquery.fec.gov/pdf/650/201610310200642650/201610310200642650.pdf>.

¹² MUR 7214 Resp. at 2; MUR 7242 Resp. at 2.

¹³ MUR 7214 Resp. at 2; MUR 7242 Resp. at 2; Committee 2016 Year-End Report, <http://docquery.fec.gov/pdf/890/201701310200021890/201701310200021890.pdf>.

¹⁴ *See* notes 15, 17.

1 \$750,000 to Floridians¹⁵ and \$2 million to SMP¹⁶ during 2016. In October 2016, SMP made two
2 contributions of \$500,000 each to Floridians.¹⁷

3 Complainant argues that the contributions from Thomas Murphy, Jr. and Coastal to
4 Floridians and SMP show that subsequent expenditures were coordinated with the Candidate and
5 the Committee. Respondents contend that the contributions by Thomas Murphy, Jr. and Coastal
6 Construction to Floridians and SMP do not satisfy the conduct prong of the Commission's
7 coordinated communication regulations.

8 **B. Analysis**

9 1. The Committee's Loan did not Violate the Act

10 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of
11 value made by any person for the purpose of influencing any election for Federal office.¹⁸ The
12 Act provides that no person may make, and no candidate, officer, or employee of a political
13 committee (other than an independent-expenditure-only committee or a hybrid account) shall
14 knowingly accept any contribution that violates the contribution limits¹⁹ set forth in 52 U.S.C.
15 § 30116, or the prohibitions on contributions by national banks, corporations or labor
16 organizations set forth in 52 U.S.C. § 30118.

¹⁵ See Floridians 2016 October Quarterly and Year-End Reports,
<http://docquery.fec.gov/pdf/036/201704259053477036/201704259053477036.pdf>,
<http://docquery.fec.gov/pdf/611/201701319041583611/201701319041583611.pdf>.

¹⁶ See SMP 2016 October Quarterly Report,
<http://docquery.fec.gov/pdf/451/201706229065072451/201706229065072451.pdf>.

¹⁷ See SMP 2016 Post-General Election Report,
<http://docquery.fec.gov/pdf/026/201706229065076026/201706229065076026.pdf#navpanes=0>;
Floridians 2016 Post-General Election Report,
<http://docquery.fec.gov/pdf/482/201612089039971482/201612089039971482.pdf>.

¹⁸ 52 U.S.C. § 30101(8)(A)(i) (emphasis added).

¹⁹ During the 2016 election cycle, the contribution limit per election was \$2,700.

1 As a general exception to this rule, Commission regulations provide, "candidates for
2 federal office may make unlimited expenditures from personal funds," which include
3 contributions to their principal campaign committees.²⁰ Personal funds include "personal
4 assets," which are "[a]mounts derived from any asset that, under applicable State law, at the time
5 the individual became a candidate, the candidate had legal right of access to or control over, and
6 with respect to which the candidate had legal and rightful title or an equitable interest," as well as
7 "income," which includes "[i]ncome from the candidate's stock or other investments
8 including...proceeds from the sale or liquidation of such stocks or investments."²¹ A candidate
9 may sell a personal asset for fair market value and then use the income derived from the sale to
10 benefit his authorized campaign committee without violating the Act, so long as the asset is sold
11 at the "normal and usual market price."²²

12 Under the Act, a "loan" includes a guarantee, endorsement, and any other form of
13 security.²³ Each endorser or guarantor shall be deemed to have contributed that portion of the
14 total amount of the loan for which he or she agreed to be liable in a written agreement.²⁴ A loan
15 that exceeds the contribution limits, or otherwise violates 52 U.S.C. §§ 30116 or 30118, is
16 unlawful, whether or not it is repaid.

²⁰ 11 C.F.R. §§ 110.10, 100.33. *See also* Advisory Op. 1991-90 (Hoagland) (Jan. 15, 1991) (Affirming that Commission regulations permit a candidate to make unlimited expenditures, including personal loans, from his personal funds); Advisory Op. 1985-33 (Collins) (Nov. 22, 1985) (same).

²¹ 11 C.F.R. §§ 110.10, 100.33(a), (b).

²² *See* Factual and Legal Analysis at 6 MUR 6412 (Blumenthal) (Commission found it permissible for a candidate to sell his interest in a residence they owned jointly to his wife and then loan the proceeds of the sale to his principal campaign committee); Advisory Op 1984-60 (Mulloy) (Jan. 11, 1986) (Commission found it permissible for a candidate to sell his interest in a partnership to a family member and use the proceeds to retire campaign debt, so long as the sale was made at the "usual and normal" market price).

²³ 11 C.F.R. § 100.52(b).

²⁴ 11 C.F.R. §§ 100.52(b)(3), 100.82(c).

1 A loan to a political committee or a candidate by a commercial bank is exempt from the
2 definition of contribution, if such loan is made in accordance with applicable law and in the
3 ordinary course of business.²⁵ A loan will be deemed to be made in the ordinary course of
4 business if it: “(1) [b]ears the usual and customary interest rate of the lending institution for the
5 category of loan involved; (2) [i]s made on a basis that assures repayment; (3) [i]s evidenced by
6 a written instrument; and (4) [i]s subject to a due date or amortization schedule.”²⁶ A loan is
7 considered “made on a basis that assures repayment” if it is obtained using a perfected security
8 interest in collateral owned by the candidate, the fair market value of the collateral is equal to or
9 greater than the loan amount, and the candidate provides documentation to show that the lending
10 institution has a perfected security interest in the collateral.²⁷ Sources of collateral include
11 goods, accounts receivable, and cash on deposit.²⁸

12 Here, the Committee’s loan from Amalgamated Bank was guaranteed by the Candidate’s
13 personal funds. The stock in Coastal Construction, which Murphy sold to get the \$1. million to
14 guarantee the Committee’s loan, had been Murphy’s personal property since December 2012 and
15 had been declared as a personal asset on his House disclosure reports for 2012 through 2016.²⁹
16 The Candidate sold the stock back to Coastal Construction for the “Book Value” as defined in
17 Coastal Construction’s shareholders’ agreement.³⁰ The Complaints provide no facts to support

²⁵ 11 C.F.R. § 100.82(a).

²⁶ *Id.*

²⁷ 11 C.F.R. § 100.82(e)(1)(i).

²⁸ *Id.*

²⁹ MUR 7199 Resp. at 3-4, Ex. B.

³⁰ MUR 7199 Resp. at Ex. B.

1 the allegations that the shares of the closely held company had “no real market value” or that the
2 value of the shares was “contrived.”³¹ The Candidate’s father provided a sworn statement that
3 the issuance and sale of the stock was governed by a shareholders’ agreement, executed on
4 December 9, 1998, which establishes that the “Book Value” of its stock would be determined by
5 the fair market value, as calculated by a certified public accountant using generally accepted
6 accounting principles.³² Without information to refute the assertions in this declaration, there is
7 no basis to suggest that the Candidate did not receive fair market value for the sale of his
8 shares.³³

9 Further, the terms of the \$1 million loan the Candidate guaranteed for the Committee
10 seem to satisfy the requirements of 11 C.F.R. § 100.82. The loan to the Committee by
11 Amalgamated Bank, a national commercial bank, bears a 3.5% interest rate, which, according to
12 the terms of the Credit Agreement, was equal to “the interest rate per annum equal to the Base
13 Rate in effect on such day, plus the Applicable Margin” and was not less than 3.25%.³⁴
14 Additionally, the loan was made on a basis that assured repayment since it was guaranteed by \$1
15 million cash collateral. Finally, the terms of the loan are reflected in the written Credit
16 Agreement Murphy executed on October 25, 2016, and the loan had a maturity date of April 25,
17 2017.³⁵ Respondents assert that the loan was at the usual and customary interest rate of the

³¹ MUR 7242 Compl. at 2.

³² Thomas Murphy, Jr. Decl. at ¶ 5.

³³ See AO 1984-60 (Mulloy) (Stating that an appraisal by an expert using generally acceptable appraisal methods is acceptable as prima facie evidence of a property’s usual market price, although it does not rule out other valuation methods that would “reliably establish such price or value”); see also Factual and Legal Analysis at 6 MUR 5421 (Kerry for President) (Commission accepted appraisal by a state-certified appraiser as “prima facie evidence of the fair market value” of the property).

³⁴ MUR 7199 Resp. at Ex. B.

³⁵ *Id.*

1 lending institution for this type of secured loan. Complainants offer no information which
2 refutes this claim, and we are not aware of any contrary information.

3 In addition, the allegation that Murphy's repayment was improper is based on a
4 misapplication of 11 C.F.R. § 116.11. Commission regulations also restrict how an authorized
5 committee may repay personal loans by a candidate that exceed \$250,000.³⁶ "Personal loans,"
6 for the purposes of 11 C.F.R. § 116.11, include "loans made to a candidate's authorized
7 committee that are endorsed or guaranteed by the candidate or that are secured by the candidate's
8 personal funds."³⁷ An authorized committee "[m]ay repay the entire amount of the personal
9 loans using contributions to the candidate or the candidate's authorized committee provided that
10 those contributions were made on the day of the election or before" and "[m]ay repay up to
11 \$250,000 of the personal loans from contributions made to the candidate or the candidate's
12 authorized committee after the date of the election," if it does so within 20 days of the election.³⁸
13 If the aggregate outstanding balance of the personal loans exceeds \$250,000 after the election,
14 the committee may only use the amount of cash on hand as of the day after the election to repay
15 all or part of the personal loans, and must treat the portion of any outstanding balance as a
16 contribution by the candidate, which should be reported in the first disclosure report filed after
17 the election.³⁹

18 Complainant misapplies the regulation, which restricts loan repayments *by committees*.
19 The Committee did not repay a personal loan from the Candidate. Rather, the Candidate repaid

³⁶ 11 C.F.R. § 116.11(b), (c).

³⁷ 11 C.F.R. § 116.11(a).

³⁸ 11 C.F.R. § 116.11(b)(1).

³⁹ *Id.*

1 the Committee's bank loan, and the Committee properly reported the loan repayment as an in-
2 kind contribution. Further, there is no information to suggest the repayment of the loan violated
3 the Act or any other Commission regulation.

4 Further, the Complaint's contention that the Committee improperly reported the single
5 loan as two \$1 million loans in its 2016 Post-General Election Report is incorrect.⁴⁰ The
6 Committee properly reported both the loan and Murphy's guaranty in accordance with 11 C.F.R.
7 §§ 100.82(b) and 104.3 on the Committee's 2016 Post-General Election Report.⁴¹ The loan
8 guaranty was also reported in a 48-hour notice filed with the Commission, in compliance with
9 Section 104.5(f). Similarly, the Committee reported the loan repayment as an in-kind
10 contribution from Murphy and as an itemized disbursement to the lender on its 2016 Year-End
11 Report.⁴²

12 In summary, the Commission finds no reason to believe that Patrick Murphy, Friends of
13 Patrick Murphy and Brian Foucart in his official capacity as treasurer, Thomas Murphy, Jr., and
14 Coastal Construction violated 52 U.S.C. §§ 30116 or 30118 by accepting or making excessive or
15 prohibited contributions to the Murphy campaign. Further, the Commission finds no reason to
16 believe the Committee violated 52 U.S.C. § 30104(b) or 11 C.F.R. § 116.11.

⁴⁰ MUR 7219 Compl. at 2-3.

⁴¹ See also AO 1985-33 (Collins).

⁴² *Id.*

2. The Coordination Allegations are Unsupported

The Act provides that an expenditure made by any person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees or their agents” constitutes an in-kind contribution.⁴³ IEOPCs are prohibited from making contributions to candidates and their authorized committees.⁴⁴

The Commission’s regulations provide a three-part test for determining when a communication is a coordinated expenditure, which is treated as an in-kind contribution.⁴⁵ The communication must: (1) be paid for by a third party; (2) satisfy one of five “content” standards listed in 11 C.F.R. § 109.21(c); and (3) satisfy one of six “conduct” standards listed in 11 C.F.R. § 109.21(d).⁴⁶ All three prongs must be satisfied for a communication to be considered coordinated.⁴⁷ Respondents do not dispute that the independent expenditures sponsored by Floridians and SMP satisfy the “payment” and “content” requirements.⁴⁸ We therefore focus our analysis on the “conduct” standards.

The Commission’s regulations at 11 C.F.R. § 109.21(d) set forth six types of conduct between the payor and the candidate’s committee, whether or not there is formal agreement or collaboration, which can satisfy the conduct prong. Such conduct includes: (1) a request or

⁴³ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20; *see also* 52 U.S.C. § 30104(b) (requiring political committees to disclose to the Commission contributions received from other political committees and persons).

⁴⁴ *See* 52 U.S.C. §§ 30116(f), 30118(a); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

⁴⁵ 11 C.F.R. § 109.21(a)-(b).

⁴⁶ *Id.*

⁴⁷ *Id.* *See also* Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

⁴⁸ It is clear that third parties—SMP and Floridians—paid for the reported independent expenditures satisfying the first prong of the coordination regulations. *See* 11 C.F.R. § 109.21(a)(1). These advertisements also satisfy the content standard because they qualify as a public communication that expressly advocated the election of a candidate. *See id.*

1 suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former
2 employee or independent contractor; and (6) dissemination, distribution, or republication of
3 campaign material.⁴⁹

4 Here, the Complaint does not provide specific examples of the communications that are
5 alleged to have been paid for by Floridians, nor does it include any other facts that would satisfy
6 the conduct prong of the coordinated communications test. The Complaint alleges, “[N]umerous
7 financial transfers between Murphy, his father, their family company and [Floridians]...indicate
8 coordination between Murphy and [Floridians].”⁵⁰ The Commission has already determined, in
9 another matter involving the Candidate’s 2016 campaign and Floridians, that “[t]he fact that
10 Thomas Murphy and Coastal Construction contributed to [Floridians], and that Rep. Murphy has
11 an ownership interest in Coastal Construction, without more, does not appear to satisfy any of
12 the conduct standards.”⁵¹

13 The available information does not indicate that contributions by Thomas Murphy, Jr.
14 and Coastal Construction or expenditures by Floridians and SMP would otherwise meet the
15 conduct prong, because they were not made at the request or suggestion of the Committee, with
16 its material involvement, or after substantial discussion with the Committee.⁵² There is also no
17 information that Floridians, SMP, Thomas Murphy, Jr., or Coastal Construction shared common

⁴⁹ 11 C.F.R. § 109.21(d).

⁵⁰ MUR 7199 Compl. at 1.

⁵¹ MUR 7067 (Friends of Patrick Murphy), FLA at 5 (finding no reason to believe that Floridians coordinated their communications with the Candidate or the Committee).

⁵² 11 C.F.R. § 109.21(d).

1 vendors, former employees, or independent contractors with the Committee,⁵³ or disseminated,
2 distributed, or republished the Candidate's campaign material.⁵⁴

3 Because the available information fails to satisfy the coordinated communications test,
4 the Commission finds no reason to believe that Patrick Murphy, Friends of Patrick Murphy and
5 Brian Foucart in his official capacity as treasurer, Thomas Murphy, Jr., Coastal Construction
6 Group of South Florida, Inc., Floridians for a Strong Middle Class and Jennifer May in her
7 official capacity as treasurer, and Senate Majority PAC and Rebecca Lambe in her official
8 capacity as treasurer, violated 52 U.S.C. §§ 30116 or 30118 by making or accepting excessive or
9 prohibited contributions.

⁵³ *Id.* Disclosures to the Commission indicate that Floridians and SMP used two of the same vendors, Waterfront Strategies and AKPD Message and Media for their media advertising buys at different times during the election cycle; however, reports also indicate that the Committee did not make disbursements to either of these vendors. Disclosures from Floridians and SMP also indicate that they used the same vendors to make independent expenditures for media buys to support other federal candidates during the 2016 election cycle.

⁵⁴ *Id.* The fact that Thomas Murphy, Jr., Coastal Construction, made contributions to Floridians or that Floridians paid for independent expenditures to support Patrick Murphy's candidacy is not itself evidence of coordination, where the specific elements of the conduct prong have not been satisfied. *See e.g.*, MUR 7067 (Friends of Patrick Murphy), FLA at 5 (finding no reason to believe that Floridians coordinated their communications with the Candidate or the Committee); MUR 6679 (Renacci) (finding that the timing and dollar amount spent for television and media buys by IEOPC to support the federal candidate are insufficient to establish coordination, where elements of the conduct prong are not met); MUR 6477 (Turn Right USA) (finding no coordination by IEPOC that made independent expenditures to support federal candidate where elements of conduct prong are not met); MUR 6821 (Shaheen) (same).